

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**DePuy Mitek, Inc.**  
**a Massachusetts Corporation**

**Plaintiff,**

**V.**

**Civil No. 04-12457 PBS**

**Arthrex, Inc.**  
**a Delaware Corporation and**

**Pearsalls Ltd.**  
**a Private Limited Company**  
**of the United Kingdom**

## Defendants.

**DePuy Mitek's Motion to Strike Arthrex's Reliance On Its Own Interrogatory Contentions and Dr. Mukherjee's TigerWire Opinions In Opposition to DePuy Mitek's Motion For Summary Judgment of Infringement and No Inequitable Conduct**

In opposing DePuy Mitek's motion for summary judgment of infringement, Arthrex has relied on defendants' contention interrogatory responses as substantive evidence of noninfringement. Defendants' contention interrogatory responses, however, are inadmissible hearsay and unqualified expert testimony. Therefore, Mitek moves to strike defendants' interrogatory responses (Arthrex Exs. 14 and 15) and Arthrex's reliance on them in opposing Mitek's Summary Judgment motion (Arthrex SJ Opp. at 8-9; Arthrex Response to Mitek Facts 12, 16, 20, 21, 22, 34, 37, and 38).

Arthrex has also relied on Dr. Mukherjee's technical opinion with respect to TigerWire and pliability in opposing Mitek's motion for summary judgment of infringement. But Dr. Mukherjee's opinion is based on tests that he admits were not performed and an unreliable methodology. Accordingly, Mitek moves to strike Arthrex's reliance on Dr. Mukherjee's opinion, which includes striking:

- Arthrex's reliance on Dr. Mukherjee's opinions (Arthrex's SJ Opp. at 5, n.7);

- Arthrex's SJ Opp. Ex. 6 at 30-31; and
- Arthrex's Responses to Mitek Facts 40-45.

Dated: September 15, 2006

DEPUY MITEK, INC.,  
By its attorneys,

/s/ Erich M. Falke

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**CERTIFICATE OF SERVICE**

I certify that I am counsel for DePuy Mitek, Inc. and that a true and correct copy of:

**DePuy Mitek's Motion to Strike Arthrex's Reliance On Its Own Interrogatory Contentions and Dr. Mukherjee's TigerWire Opinions In Opposition to DePuy Mitek's Motion For Summary Judgment of Infringement and No Inequitable Conduct**

was served on counsel for Defendants Arthrex, Inc. and Pearsalls Ltd. on this date via the Court's e-mail notification with the following recipients being listed as filing users for Defendants:

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Dated: September 15, 2006

/s/ Erich M. Falke

Erich M. Falke